



California Fair Political Practices Commission

October 4, 1985

Palmer Madden
McCutchen, Doyle, Brown & Enersen
1855 Olympic Boulevard, Third Floor
Post Office Box V
Walnut Creek, CA 94596-1270

Re: Your Request for Advice,
Our File No. A-85-197

Dear Mr. Madden:

Thank you for your letter of September 12, 1985 to Commission Chairman Dan Stanford. In your letter, you asked a number of questions concerning the possible disclosure obligations of individual Justices arising from the activities of the Committee to Conserve the Courts. I assume from your letter that this committee will support several justices. In addition, I assume that each Justice has at least one committee which is "primarily formed" to support that justice, and whose campaign statements the justice signs.^{1/}

Each of the situations you describe raises two questions. First, does the justice "control" the committee as a result of the activities described. Second, has the committee made a nonmonetary contribution to the justice by its activities on the justice's behalf.

As a general rule, a candidate controls a committee supporting several candidates whenever the candidate or his or her agent has a significant influence on the actions or decisions of the committee. Government Code Section 82016. To determine whether a candidate controls the committee, we look at the degree of his or her involvement in the committee's

^{1/} Except in very unusual circumstances, a candidate controls the primary committee established to support his or her candidacy.

Mr. Palmer Madden
October 4, 1985
Page 2

activities to determine whether the candidate controls the committee. More than one candidate can control a committee; all candidates who control a committee have certain responsibilities with respect to disclosure under the Act. See 2 Cal. Adm. Code Section 18430 (copy enclosed).

If a candidate controls a committee, expenditures by that committee on the candidate's behalf are not reportable as contributions to the candidate. However, if the candidate does not control the committee, expenditures made by the committee in support of the candidate may be nonmonetary contributions to the candidate. The test for whether an expenditure by the committee is a nonmonetary contribution to a particular justice is whether the expenditure is made "at the behest" of the justice. Government Code Section 82015. An expenditure is made at the behest of a candidate if it is made "under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of" the candidate. 2 Cal. Adm. Code Section 18215(b).

If an expenditure from the committee is a nonmonetary contribution to a justice, the committee would be required to report the expenditure as a contribution on Schedule E of the committee's campaign statement; the candidate would be required to report receipt of the nonmonetary contribution on Schedule C of his or her campaign statement.

If a justice does not control the committee, and if the committee's expenditures in support of the justice are not made at the behest of the justice, that justice has no reporting or disclosure obligations with respect to the Committee.

Turning to your specific questions, I should point out that I can only give you general guidelines on how to apply the law. You have posed a series of hypothetical questions; the answers to most of those questions depend on the particular facts involved. Therefore, this letter only constitutes informal assistance under 2 Cal. Adm. Code Section 18329(c).

1. Accepting money from an independent committee.

A justice who accepts money from the committee has received a monetary contribution from the committee which should be reported on Schedule A of the justice's campaign statement. The justice does not control the committee solely as a result of receiving the contributions.

2. Accepting funds from an independent committee where those funds have been earmarked for a particular Justice.

Again, the justice has received a monetary contribution. The contributor in this case is the person who made the earmarked contribution to the committee. The committee is an intermediary. The justice should disclose both the contributor and the committee (as intermediary) on Schedule A. The committee should report the transaction on Schedule E (the payment to the justice) and Schedule G (receipt of earmarked contributions).

This situation, by itself, does not constitute control of the committee by the justice.

3. Attending fundraising activities of an independent committee.

In this situation, the cost of the fundraiser (or a pro rata cost) would be a nonmonetary contribution to a justice who attends the fundraiser if the funds raised are used for (a nonmonetary contribution) or contributed directly to that justice.

By itself, attending the fundraiser would not indicate control of the committee by the justice.

4. Allowing his or her name on any type of letterhead of an independent committee.

Allowing his or her name to be used on the committee's letterhead would not by itself make the expenditures of the committee nonmonetary contributions to the justice. However, it may be relevant to the question of control.

If the justice's name is on the letterhead only because the committee's name includes the justice's name (e.g., "the Committee to Support Justice X"), it would have no bearing on whether the justice controls the committee. However, if the justice is listed as a member of the committee's "steering committee," as one of the committee's "sponsors," or in some similar manner, the inclusion of his or her name would be a factor in determining whether the justice controls the committee.

5. Assisting in the fundraising activities of an independent committee.

If the justice assists in raising funds which are then spent to support that justice, those expenditures will probably be nonmonetary contributions from the committee to the justice. If the funds raised are not spent by the committee to support the justice, the justice has not received a nonmonetary contribution.

Although assisting in fundraising is not sufficient, by itself, to constitute control, it is a factor to be considered in determining whether the justice controls the committee.

6. Having members of a control committee be active members of an independent committee.

If members of the justice's own controlled committee are active members of the committee, there is a possibility that the justice indirectly controls the committee. A candidate can control a committee through an agent, or because the committee is acting jointly with his controlled committee. Section 82016. Whether the justice controls the committee in this situation depends on the specific facts.

7. Having individuals listed as sponsors of the independent committee also be sponsors of a control committee.

By itself, the fact that some of the same individuals are sponsors of both the justice's own controlled committee and the committee does not establish that the justice controls the committee. However, this raises the possibility that the justice may control the committee. Whether there is such control depends on factors such as coordination of decisionmaking by the two committees.

8. Developing or implementing strategy with an independent committee.

This situation will almost always result in the justice controlling the committee. However, in any particular situation one should still look at the degree of the justice's involvement with the committee.

Even if there are special circumstances that indicate in this type of situation that the justice does not control the

committee, it is likely that expenditures of the committee in support of the justice will be nonmonetary contributions to the justice.

9. Engaging in or developing media events with an independent committee or its members.

This situation, in terms of both control and nonmonetary contributions, is similar to that described in 8. above.

10. Coordinating or exchanging speakers with an independent committee.

This raises the issues of control and nonmonetary contributions similar to those in 8. and 9., above. Again, the degree of involvement by the justice with the activities of the committee is critical.

11. Utilizing literature or materials developed or prepared by an independent committee.

If a justice uses literature or materials developed by the committee, he has received a nonmonetary contribution from the committee.

Simply using materials previously prepared by the committee does not, by itself, indicate control of the committee by the justice.

12. Allowing an independent committee to state that the control committee or the candidate knows and/or approves of the independent committee's effort in support of the control committee or candidate.

This raises the issue of control (which, as before, depends on the actual involvement of the justice with the committee). In this situation, the question is what is meant by the term "approve." If the justice approves specific activities of the committee, rather than simply approving the formation of the committee, it is more likely that the justice controls the committee.

This situation also raises a question as to whether expenditures by the committee in support of the justice are made at his behest, thus constituting nonmonetary contributions.

Mr. Palmer Madden
October 4, 1985
Page 6

As you can see, I can only give you a general indication of how we would analyze these situations. If a specific question arises as to which you want formal advice, please do not hesitate to contact us.

Very truly yours,


Barbara A. Milman
General Counsel

MCCUTCHEN, DOYLE, BROWN & ENERSEN

FORMERLY

VAN VOORHIS & SKAGGS

COUNSELORS AT LAW

1855 OLYMPIC BOULEVARD, THIRD FLOOR

POST OFFICE BOX V

WALNUT CREEK, CALIFORNIA 94596-1270

(415) 937-8000

TELECOPIER (415) 937-8004

SAN JOSE OFFICE

ONE ALMADEN BOULEVARD, SUITE 620

SAN JOSE, CALIFORNIA 95113

(408) 947-8400

SAN FRANCISCO OFFICE
THREE EMBARCADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111
(415) 393-2000

SEP 13 1985

September 12, 1985

Dan Stanford, Chairman
Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, CA 95814

Dear Mr. Stanford:

I am writing on behalf of the Committee to Conserve the Courts (the "Committee").

There are increasing efforts by independent committees to assist individual Justices of the California Supreme Court. We need your assistance so that we may advise the Committee what activities may be undertaken before it will be said that the Committee has coordinated its activities to the extent that it will have reporting obligations for activities of an independent committee. Our concern is not reporting per se because independent committees may be expected to file their own reports. What concerns us is determining at what point activity by the Committee or a Justice of the Court will become so entwined with activities of an independent committee that the F.P.P.C. believes the law imposes obligations on the Committee or the Justice to report the activity of the independent committee.

We are particularly concerned because the Political Reform Act of 1974 (the "Act") imposes upon a "person" who receives contributions or makes expenditures above certain threshold amounts the duty to file campaign disclosure reports. Government Code §§ 82013 and 84200. The Act goes on to define "person" to include a "group of persons acting in concert." Government Code § 82047. Moreover, Regulation 18215, in defining contribution, defines a contribution to be "made at the behest" of a candidate if there has been any "cooperation, consultation, coordination . . . request or suggestion" of a candidate. The breadth of this Regulation raises our concern that any involvement by a Justice with an independent committee will require the Justice to report the

Dan Stanford, Chairman
Fair Political Practices Commission
September 12, 1985
Page 2

activities of the independent committee as if the committee activity were the activity of the Justice. This concern is increased by the approach of the F.P.P.C. in the Lumsdon Opinion, 2 FPPC Opinions 140 (1976), where the Commission was prepared to find "implied" understandings based upon "assumptions" about the relationship between a majority shareholder and his closely held corporation.

Listed below are a series of activities. We would appreciate your views on each of these outlines.

1. Accepting money from an independent committee;
2. Accepting funds from an independent committee where those funds have been earmarked for a particular Justice;
3. Attending fundraising activities of an independent committee;
4. Allowing his or her name on any type of letterhead of an independent committee;
5. Assisting in the fundraising activities of an independent committee;
6. Having members of a control committee be active members of an independent committee;
7. Having individuals listed as sponsors of the independent committee also be sponsors of a control committee;
8. Developing or implementing strategy with an independent committee;
9. Engaging in or developing media events with an independent committee or its members;
10. Coordinating or exchanging speakers with an independent committee;
11. Utilizing literature or materials developed or prepared by an independent committee.

Dan Stanford, Chairman
Fair Political Practices Commission
September 12, 1985
Page 3

12. Allowing an independent committee to state that the control committee or the candidate knows and/or approves of the independent committee's effort in support of the control committee or candidate.

Very truly yours,



Palmer Brown Madden

PBM:rd-C/5:B19/20

MCCUTCHEN, DOYLE, BROWN & ENERSEN

FORMERLY

VAN VOORHIS & SKAGGS

COUNSELORS AT LAW

1855 OLYMPIC BOULEVARD, THIRD FLOOR

POST OFFICE BOX V

WALNUT CREEK, CALIFORNIA 94596-1270

(415) 937-8000

TELECOPIER (415) 937-8004

P F O
OCT 21 2 44 PM '85

SAN FRANCISCO OFFICE
THREE EMBARCADERO CENTER
SAN FRANCISCO, CALIFORNIA 94111
(415) 393-2000

SAN JOSE OFFICE
ONE ALABAMA BOULEVARD, SUITE 620
SAN JOSE, CALIFORNIA 95113
(408) 947-8400

October 18, 1985

Barbara A. Milman
General Counsel, California Fair
Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Your File: A-85-197

Dear Ms. Milman:

Thank you for your letter of October 4, 1985.

My client has a related question. What threshold must be crossed by two independent committees before it will be said that they are required to unify their reporting?

I note that the Political Reform Act of 1974 imposes reporting obligations on "committees" (Government Code § 82013), which includes both individuals and "combinations of persons." Furthermore, the word "person" is defined in the Act to include individuals "acting in concert." (Government Code § 82047) Does the F.P.P.C. hold the view that the same standards apply when one seeks to determine whether a candidate "controls" a committee as when one seeks to determine whether independent committees are acting in "concert"? If that is the case, then am I correct that the answers offered to the 12 questions I posed would be the same if these questions had been passed in terms of activities between two independent committees?

If the F.P.P.C. holds the view that the standard for "control" is different from the standard for activity "in concert," would you please explain the difference and indicate whether the "in concert" standard is a higher or lower threshold.

Very truly yours,


Palmer Brown Madden

PBM:lj-C/1:B3